

Environmental Cooperation Pilot Program 2000 Progress Report

October 31, 2000

Prepared by the
Wisconsin Department of Natural Resources



PUBL CO-137 00

Cooperative Agreement Advisory Group members:

The Wisconsin Department of Natural Resources appreciates the involvement of the current Cooperative Agreement Advisory Group members.

Brian Borofka, Wisconsin Electric Power Company
Michael Gromacki, Cook Composites & Polymers Co.
Marilou Martin, US Environmental Protection Agency
Randy Nedrelo, Northern Engraving Corporation
Matt Redmann, International Truck and Engine
Michael Ricciardi, Madison Gas and Electric
John Piotrowski, Packaging Corporation of America
Caryl Terrell, Sierra Club, John Muir Chapter
Liz Wessel, Environmental Consultant

In Remembrance of

Lynda M. Wiese

May 1, 1959 to September 24, 2000

This 2000 Progress Report is dedicated to a woman who was instrumental in every aspect of the Environmental Cooperation Pilot Program. Lynda Wiese worked at the Department of Natural Resources for 18 years and served as its Director of the Bureau of Cooperative Environmental Assistance for four years. She developed the legislation, inspired others to see the potential benefits and forged productive relations with businesses and the U.S. Environmental Protection Agency. Lynda Wiese believed in innovation and in doing what is right for the environment. Lynda's smile, laugh and inspiration will be remembered and treasured always.

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The Environmental Cooperation Pilot Program: 2000 Progress Report

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Environmental Cooperation Pilot Program: 2000 Progress Report

Executive Summary

The Environmental Cooperation Pilot Program is a Wisconsin initiative designed to test an innovative approach to regulation that also enhances the quality of our environment. Toward this end, the Environmental Cooperation Pilot Program has accumulated important experience on the potential impact of innovative legislation and identified obstacles faced by regulators in initiating changes within their respective agencies.

In terms of potential environmental improvements, the Environmental Cooperation Pilot Program has provided a means for companies seeking regulatory approval of environmental innovations. One participant foresees that by recovering ash from landfills for beneficial reuse as a sand and gravel substitute, or as supplemental fuel to generate electricity, it will be able to reduce its use of coal, and at the same time recover valuable landfill space. Other participants hope to realize reduced air emissions and waste generation, increased recycling rates, and increased employee and community awareness through their participation.

In the area of public involvement, a Cooperative Agreement Advisory Group consisting of representatives from participating facilities, environmental organizations, Wisconsin Manufacturers and Commerce, the United States Environmental Protection Agency, Wisconsin Department of Commerce, and the Department, was convened in August of 1999. This group has assisted participating facilities in developing guidelines for public involvement that have had promising early results. One facility hired a consultant to develop an outreach program, an interested parties group, and a community survey instrument. Another facility hosted an open house, facility tour and informational meeting for its interested persons group, published letters to the community and open invitations to the public in the local newspaper, and developed related information for its web site. All participants have improved their public outreach initiatives as a result of their involvement.

Through a Memorandum of Agreement, the Department and the United States Environmental Protection Agency have been refining the negotiation process, with mixed results. Discussions on key regulatory flexibility issues between and within the two agencies continue to move forward at a slow pace. As a result, the transaction cost for companies and Department staff continues to be high. Of the eight companies enrolled as of January of 2000, two have opted out. Respectively, these two companies exiting the program perceived a lack of support by the Department on their flexibility request, and a lack of support by the Department for an innovative solution to an ongoing enforcement action. In both cases, the Department has learned much from the experience, and continues to refine its negotiation process.

Despite these obstacles, facilities participating at various stages in the Environmental Cooperation Pilot Program have contributed to the Department's understanding of what industry's needs are, and are pursuing changes within their organizations which will make lasting and positive impacts on the environment.



I. Introduction to the Environmental Cooperation Pilot Program

Section 299.80 of the Wisconsin State Statutes authorizes the Environmental Cooperation Pilot Program (“the Program”) and also requires an annual progress report. This report will describe activities undertaken as part of the Program during the period from November 1999 through October 2000. This is the third progress report in the series, the first being issued on November 2, 1998, and the second on October 28, 1999.

Governor Thompson introduced the Program as part of the 1997-1999 Biennial Budget. It is designed to evaluate innovative environmental regulatory methods. The Program began in 1998, and for a five year period, ending in 2002, authorizes the Department to enter into up to ten Agreements with persons who own or operate facilities required by law to be covered by licenses or permits. An environmental management system based on the ISO 14001 standard (or equivalent) forms the basis for whole-facility regulation.

The intent of Agreements is to establish superior environmental performance and reduce administrative burdens by reducing administrative requirements of permits and streamlining approvals specified in the Agreement. Agreements are designed to promote the reduction of overall levels of pollution through this more flexible approach.

Agreements include: a commitment to superior environmental performance; an environmental management system; specific waste reduction goals; any approvals replaced by the Agreement; any operational flexibility and variances granted; a commitment to release periodic performance evaluations; and a plan to involve public participation. Both regulated and non-regulated environmental impacts are eligible for inclusion in the Agreement.

The Department and the participating company are signatories to the Agreement, however other parties can be involved in the negotiating process. The participating company is required to include public participation in this process and the Department will provide an opportunity for formal public comment for at least 30 days on any proposed issuance, amendment, or revocation of an Agreement. The law also allows for public informational meetings if desired.



II. Current Status

A. Applications to the Program

Six facilities are actively pursuing an Agreement under the Program. Two facilities have entered the formal negotiation stage. With success in the negotiations, it is anticipated that these two agreements could be signed in the next two months. The remaining four facilities will enter this final stage soon. See Appendix A for a table that summarizes the status of all applicants. Participants with formal applications under review include:

- **Cook Composites and Polymers** – a chemical manufacturer in Saukville
- **International Truck and Engine**¹ – an engine manufacturer in Waukesha
- **Madison Gas and Electric** – an electric and natural gas utility in Madison
- **Northern Engraving Corporation** – surface coating facilities in Sparta, Holmen and Galesville
- **Packaging Corporation of America** – a paper mill in Tomahawk
- **Wisconsin Electric Power Company** – an electric power plant in Pleasant Prairie

1. Examples of Flexibility Requests

Requests made by companies include:

- Reduced sampling frequency for wastewater discharges;
- Electronic reporting of wastewater data;
- Removal of requirements to monitor for pollutants not in the system based upon previous analyses;
- Reduced air pollution monitoring or reporting;
- One-stop permitting with one individual contact from the Department;
- Reduced inspections as a result of implementation of an ISO 14001 environmental management system;
- Single permit to cover a facility with a single, simplified reporting form;
- Facility-wide permit cap;
- Streamlined approval for beneficial reuse of waste products;
- Waiver from Federal MACT standard in exchange for superior environmental performance;
- Permit waiver for innovative pollution control testing and evaluation and,
- Extension of an effective permit period in order to allow for evaluation and potential implementation of an alternate pollution prevention technology.

2. Stages in Developing Agreements

Applying to the Program is a two-step process. Interested companies first submit a preliminary application, or letter of intent, which outlines their interest in the Program, their

¹ Formerly Navistar International Transportation Corporation.



commitment to superior environmental performance through implementing an environmental management system², and their initial flexibility requests.

A decision to accept a facility into the Program is made by the Department Secretary based on this letter of intent. Accepted companies submit an official application in the form of a Draft Agreement. It serves as the starting point for negotiating the Agreement between the Department and the participating facility. The Draft Agreement outlines their commitment to the Program's principles and their requests for flexibility. These principles include: creation of an interested person's group, implementation of an environmental management system (EMS), commitment to superior environmental performance, setting specific pollution limits, provision of baseline and periodic performance evaluations, and commitment to reporting violations.

Once received by the Department, Draft Agreements are made available to the public on the Department's web site. These drafts are also sent to the United States Environmental Protection Agency (USEPA) for their review prior to beginning negotiations.

Following receipt of a company's Draft Agreement, Department staff meet internally to draft a counterproposal. The counterproposal is essentially an assessment of the Department's ability or willingness to accommodate the flexibility and variance requests, as well as any additional environmental performance items. The Department consults with USEPA at this time on any issues involving federal authority or oversight. This consultation sometimes involves complicated or unprecedented legal issues and can significantly extend the amount of time necessary to draft a counterproposal.

When the counterproposal is complete, the Department makes it available on its web site and issues a public notice announcing its intention to negotiate an Agreement with the company. Copies of the counterproposal are sent to the pilot company and USEPA. Formal negotiations commence after the Department drafts the counterproposal and issues the public notice of intent to negotiate. The nature of these negotiations and the process will vary from case to case. In all cases, when consensus is reached on all the issues the Department will issue a Draft Final Agreement, along with a fact sheet, and provide a 30-day public comment period. A public informational meeting may be scheduled during the comment period in some cases.

At this point, the two companies that are furthest along in the process are negotiating and working on Draft Final Agreements.

3. National Database on Environmental Management Systems

Facilities participating in the Program are required to provide baseline data and periodic reports highlighting their performance as a result of adopting environmental management systems (EMS). Most of the cooperative agreement pilots are accomplishing this by contributing information to the National Database on Environmental Management Systems,

² According to s. 299.80, Wis. Stats., companies participating in the Environmental Cooperation Pilot Program are required to implement an environmental management system that is "based on the standards...issued by the International Organization for Standardization, or an alternative environmental management system that is acceptable to the Department". Participating companies will be required to document their environmental management systems and to provide baseline and annual performance evaluations to the Department, however, third-party certification of the environmental management system is not a requirement.

an ongoing study funded by USEPA's Office of Water and managed by the University of North Carolina and the Environmental Law Institute.

This research project, the first of its kind to be undertaken on a national level, is addressing the question of whether EMS implementation and certification does in fact achieve equal or better results than regulatory compliance alone. The study will also measure the effect an EMS has on other criteria such as economic performance, pollution prevention and interested party involvement. The first two public reports on the national database can be accessed on the following web site: <http://www.eli.org/isopilots.htm>.

B. Public Information Process

The Department anticipates that through this innovative Program, there will be an increase in public understanding, involvement, and confidence in the environmental decisions that affect their communities. Over the past year, significant strides have been made with stakeholder involvement. The Program is intended to be transparent on several levels. First, an Advisory Group consisting of representatives from participating facilities, environmental organizations, Wisconsin Manufacturers and Commerce, USEPA, Wisconsin Department of Commerce, and the Department, is evaluating the Program's overall performance.

Second, there is a detailed public information process that the Department is required to follow as it pursues Agreements with pilot facilities. Under this process, all Agreements entered into, Draft Agreements, letters of intent and documents received by the Department as part of the Program are subject to public review. The Department's website is the primary mechanism for distributing this information to the public. Documents relating to the Program can be accessed at the following address: <http://www.dnr.state.wi.us/org/caer/cea/ecpp/index.htm>. This web page received 1,588 hits between November 1, 1999 and August 31, 2000.

In addition to information being on the web, the Department publishes a public notice when negotiations start with a company, an Agreement is ready to sign, and anytime there is an amendment to or revocation of an Agreement. The Department issued a public notice (Appendix B) on the intent to negotiate with Cook Composites and Polymers on August 1, 2000 and with Wisconsin Electric Power Company on August 31, 2000. The Department will provide at least 30 days for public comment on any proposed issuance, amendment or revocation of an Agreement and will offer the opportunity for the public to request a public informational meeting or contested case hearing as provided in s. 299.80, Wis. Stats.

Third, participating companies are required to organize an interested persons group which provides input on the company's EMS and reviews the company's performance under the Agreement. As the individual pilots explore how they will build the public's confidence through their interested persons group, the Department plans to evaluate the success of the public outreach efforts through focus groups and in consultation with the Advisory Group. Thus far participating companies are taking slightly different approaches with their interested persons groups. Some applicants are working through issues that may or may not prove to be roadblocks prior to involving a public interest group. Others are starting their public interest groups at the onset.



Packaging Corporation of America (PCA), and International Truck and Engine (International)

These two companies have focused on specific feasibility issues with the Department and/or USEPA. Significant movement has been made in resolving the hurdles that have hindered the progression of these Agreements. With the progress that has been made, further work now needs to be completed on the formation of their interested persons groups. Both are in the process of identifying and contacting potential members. International has presented its proposal to the Waukesha Area Emergency Response Coordinators.

Northern Engraving Corporation (NEC)

On September 29, 2000, NEC submitted a draft plan for setting up their stakeholder group. NEC's staff identified the purpose of the group is to "provide a vehicle through which to communicate corporate environmental information and to receive input from local community, governmental, and business representatives". NEC will consider including Department employees, Union Stewards, Public Works Officials, Local business representatives, community environmental, Conservation and outdoor groups, and a local representative from the community at large. NEC laid out a selection process and has set a goal of December 15, 2000 for having the group in place and functioning.

Cook Composites and Polymers (CCP)

In June 2000, Cook Composites and Polymers hired a consultant to develop an outreach program and an interested parties group. The outreach program further enhances preexisting community involvement. A community survey instrument (Appendix C) was designed, distributed and the results summarized to help provide baseline information.

Cook Composites and Polymers has attempted to involve all interested persons and parties, including but not limited to its employees, neighbors, area businesses, local elected and appointed officials, Department staff, Local Emergency Planning Committee, Fire Department, citizen groups, neighborhood associations and others in the greater Saukville area. The interested parties group will address not only CCP's Agreement, but other pollution prevention activities as well. A public meeting on July 31, 2000, provided information and solicited public input about the Agreement. This meeting also served as a mechanism to solicit additional participation on the interested persons group.

Wisconsin Electric Power Company (WEPCO)

WEPCO contacted the following groups to seek out potential interested persons: employees of Wisconsin Electric; residents of the community; community leaders/elected officials; local community organizations; local and statewide environmental organizations; local companies; Department staff or other agencies; suppliers; persons previously interested or involved in the plant's activities; and, media. WEPCO's application included the list of specific groups that were invited to participate. WEPCO expects the list of individuals representing the various groups to be dynamic.

WEPCO hosted an open house, plant tour and informational meeting on August 2, 2000. Members of the interested persons group received written invitations. In addition, a letter to



the community including an open invitation to the public was published as a quarter-page advertisement in the local newspaper.

In addition to working with a formal interested persons group, WEPCO has taken numerous steps to more broadly involve stakeholders in their pilot project, including but not limited to the following: announcements and updates in employee newsletters; postings on their Internet web site; personal contacts of local officials to solicit their feedback; in-person meetings with statewide environmental group representatives (Sierra Club, Renew Wisconsin, and Citizens for a Better Environment), as well as frequent phone conversations, e-mails and informal face-to-face discussions; press releases; and, presentations at state and national conferences.

Madison Gas and Electric (MGE)

MGE established an interested persons group called the MGE Community Environmental Advisory Group. MGE finalized its composition and confirmed each member prior to submitting their application for the pilot program on September 7, 2000. The group first met on September 27, 2000. MGE will meet with the group up to five more times in the next year and intends to amend their application if necessary based on the group's feedback. The group will meet at least semi-annually thereafter. Meetings are held in the evening for the convenience of the interested persons. MGE hosts the meetings and provides supper.

MGE's interested persons group will have seven to nine members (currently eight) with staggering terms. All members live or own a business within MGE's service area. Members represent a local perspective rather than statewide or national, in the following areas: a) neighborhood association members from the more immediate area around the facility; b) business; c) developer/contractor; d) government; e) low-income knowledgeable; and, f) environmental group. MGE is also inviting Department representatives to attend meetings, as well as a professional facilitator.

When selecting specific individuals for membership, MGE strived for a broad diversity of perspectives such as: a) technical: familiar with environmental compliance; b) non-technical: not familiar with environmental compliance; c) male/female; d) various age groups; and, e) multicultural.

C. Cooperative Agreement Advisory Group

The Cooperative Agreement Advisory Group, consisting of representatives from each of the participant pilot facilities, environmental organizations, Wisconsin Manufacturers and Commerce, the U.S. Environmental Protection Agency – Region 5, and the Department of Commerce, held its first meeting in August of 1999. The Groups' mission is to provide guidance to the Department on Program development issues.

The Advisory Group assisted the Department in developing a set of performance measures for the Program (Appendix D). The Performance Measures Table identifies any potential and measurable Program performance factors as outlined under s. 299.80, Wis. Stats., and further determines how and by whom these factors may be measured. While it has been agreed that this list is only a suggested array of measures, the list is being used by each facility as a guide for reporting under the Program. The performance measures will assist the pilot companies in



choosing performance measures for their own individual Agreements that will consistently relate back to the program goals stated in the statute.

In addition, the Advisory Group has done some preliminary work on defining key parameters that measure the Program as a whole. And, the Advisory Group has provided input into the overall content of these progress reports.

D. Working with the United States Environmental Protection Agency

The nature of the Program requires that the Department and USEPA - Region 5 work together. A Memorandum of Agreement (MOA) was signed on March 25, 1999, that defines roles and responsibilities of the Department and USEPA and outlines the process for review and issue resolution for the Program.

USEPA - Region 5 has set up a structure to carry out their part of the MOA. They designated a point of contact for the Department that serves as the coordinator for both the regional USEPA offices and for National Program Offices, and organizes the USEPA team for each of the Agreements. The coordinator serves to facilitate the flow of information, to coordinate procedures with the Department, to schedule conference calls, and to ensure timely responses. USEPA formed teams for each Agreement, so that they would be ready to work with the Department when requested.

Despite the presence of an organized administrative structure, the communication and coordination on the part of both agencies has not always been smooth. Working through complex technical and legal issues has proven difficult. Slow response time is a common frustration among staff and applicants. Both agencies are working cooperatively to improve and, if necessary, modify procedures. The Department appreciates USEPA's involvement and support in Program implementation.

E. Potential Impacts to the Natural, Social and Economic Environments

The Program encourages companies to go beyond compliance and to demonstrate superior environmental performance. As such, these companies are expecting a number of outcomes through their participation in the Program.

Wisconsin Electric Power Company (WEPCO) foresees that by recovering ash from landfills for beneficial reuse as a sand and gravel substitute, or as supplemental fuel to generate electricity, it will be able to reduce its use of coal, and at the same time recover valuable landfill space. In time, it may be able to decommission its landfills altogether. It will also promote improved environmental performance from its key suppliers through environmental auditing procedures. Mercury emission reduction technologies will also be evaluated and demonstrated under the Agreement.



Both International Truck and Engine Company and Packing Corporation of America (PCA) hope to realize reduced air emissions and waste generation, increased recycling rates, and increased employee and community awareness through participation in the Program.

Madison Gas and Electric (MGE) projects an increase in the use of waste materials to generate electricity, continued development of alternative energy production methods, a reduction in the amount of mercury potentially discharged to the environment, and a further reduction in the amount of waste generated or sent to landfills.

Cook Composites and Polymers (CCP) projects a reduction of very significant quantities of hazardous waste generated and an increase in the recycling and/or reuse of solvent through its Program activities. As part of its EMS, CCP is also committing to pursue additional opportunities for pollution prevention and waste reduction, and to take leadership in product stewardship.

Northern Engraving Corporation (NEC), through its EMS, has already realized very significant reductions in VOCs and Hazardous Air Pollutants. Future projections include reduction in energy use, lower VOCs and Hazardous Air Pollutants, overall reduction in amount of waste materials generated, and a reduction in the amount of waste that is being sent off site at each of its facilities. It further projects that alternative methods of production which have lesser impacts on the environment will be developed through the Program.

In addition, by implementing the above-mentioned strategies, each facility hopes to positively affect its bottom line.

Perhaps more important than those positive impacts to the natural and economic environment that result from the above actions, are the potential social and community benefits that may occur due to a more environmentally aware workforce, higher ownership of environmental commitments by facility operators, and more knowledge and involvement by local communities where the facilities are located. An educated and engaged local citizenry may be more effective in prompting continual environmental performance improvements than can be realized by any action taken by the DNR or the USEPA.

F. Challenges

As is the case with any new and innovative initiative, the Program has faced challenges since its inception. As the Program has developed, formidable obstacles both internally and externally have arisen. While some of these barriers have been removed, there are still many which continue to hinder the success of the Program. An independent report by the Wisconsin Legislative Audit Bureau has also provided its observations on the Program (Appendix E).

Challenges Addressed

The *1999 Progress Report* identified two challenges that have been subsequently addressed. First, educating companies about the stakeholder involvement process and second, developing performance measures. The Cooperative Agreement Advisory Group has been active in both areas. Educational materials on stakeholder involvement have been made available to



participating facilities. In addition, two companies, Cook Composites and Polymers and Wisconsin Electric shared their stakeholder involvement experiences with the Advisory Group. The Department has made it clear that a stakeholder meeting must take place prior to the beginning of Agreement negotiations. The agency is monitoring the stakeholder involvement processes being used by the various companies in the program. The Advisory Group and the Department's internal work group jointly prepared a Program performance measures table (Appendix D).

Challenges Outstanding

Outstanding issues remaining under the 1999 Report's "Future Steps" section involve the development of procedures to negotiate and sign Agreements. The Program is behind its projected schedule for the completion of Agreements. Of the ten potential Agreements allowed under the Program, there are six participating facilities. Two companies, Kohler-Generator and Nestlé USA, decided not to continue in the Program. Department staff are making a continued effort to recruit new companies. It is the opinion of the Department that several facilities may be interested in the program if their participation resulted in relief from construction permits resulting from the acceptance of an air emission cap. This incentive will be explored with the Bureau of Air Management and, if appropriate, actively pursued and marketed. The Department also believes that getting a few Agreements signed will help get more applicants. Other companies have been reluctant to sign on due to the lack of signed Agreements.

Kohler Company-Generator Plant, the Generator Division of Kohler Company, assembles electric power generators powered by internal combustion engines that serve as standby or emergency power sources. The company expressed an interest in participating in the Program in March of 1999, and was one of the first to join. The company's decision to withdraw was based in part on its belief that the degree of flexibility offered by the Program simply did not outweigh its costs. Specifically, Kohler-Generator was concerned that pressure was mounting against their pursuit of a program that would, in the eyes of the public, relax environmental regulations at its facility.

Nestle USA, in a letter received on July 12, 1999, requested that three plants in Wisconsin be considered for the Program; the Stoughton plant which makes taco shells, the Jefferson plant which makes pet food, and the Eau Claire plant which makes infant formula and other liquid and powder products. On July 5, 2000, the company submitted a letter withdrawing all three facilities from the Program. The reason given referred to an ongoing enforcement action at its Eau Claire facility and cited "...the Department's lack of support during the enforcement proceedings, particularly after having indicated that certain flexibility could be granted and then implying that we could possibly work with enforcement on some type of compliance EMS".

The difficulties faced by these two companies illustrate a major challenge; namely that of developing an Agreement that can mutually satisfy the needs of the participating facility, the Department, and USEPA.

USEPA - Region 5 faces challenges as it coordinates the process with both their Regional Office and headquarters offices. As a regional branch of a federal agency, it must work with



other USEPA offices in reaching agreement on flexibility issues. This process is necessary and sometimes results in unanticipated delays during negotiations.

The Department has also been similarly hampered as the Cooperative Environmental Assistance Bureau strives to engage internal regulatory programs in the negotiation process. As practitioners of a new regulatory approach, achieving credibility and subsequent active support from these vitally important internal partners has been a challenge. Consequently, securing adequate staffing commitments from the sister regulatory programs is an ongoing concern. Securing adequate resources within the new Bureau is also problematic. As the Program was authorized by the Legislature without provisions for staffing, its development has resulted in a reallocation of resources from business sector initiatives and other activities.

Both agencies see the need to revisit the process and improve agency communication.

In summary, USEPA and the Department are in transition, both structurally and philosophically, into an era of environmental regulation that strives to foster new voluntary approaches that work, while still retaining vital command and control safeguards. For any individual regulator this would be difficult. For an agency, the challenge increases by orders of magnitude.

Advisory Group Feedback

At their August 2000 meeting the Advisory Group discussed the messages that they believed should be made in this annual report. There was no attempt made to develop consensus positions, however there were several areas of general agreement.

In the area of general status there are two main points. The first point is simply that the Program is not far enough along to make absolute judgments. However, there is a realization that transaction costs and turnaround time to achieve an Agreement is high. The full negotiation process has yet to be completed for any one Agreement. There are no signed Agreements. Signed Agreements will be needed to evaluate whether they will result in benefits to the public and/or private sectors. The second general observation is a positive one. There has been positive cooperation and motivation by those participating in the program. It is understood that the companies involved, while seeking positive public relations, are motivated to achieve measurable environmental improvements and to improve communication with key stakeholders beyond the Department and USEPA.

The transaction costs for all of those involved in the process have been very high. The process has been time consuming. The Advisory Group also noted that meaningful public involvement requires a significant resource commitment. These factors present a special challenge as we seek to invite small and medium size businesses into this and other innovative programs both at the state and federal level. Such companies may realize the highest economic and market benefit gained by participation. However, if the program entry and maintenance costs are exorbitantly high, then we will have established a de facto barrier to their participation.

The review and approval process of the Draft Agreements within both the Department and USEPA has been very slow. Some of this can be attributed to the newness of the process and the legal care necessary to ensure that mistakes are not made resulting in poorer rather than



better environmental protection. These reviews have resulted in delays, missed deadlines and high costs to all involved. Some members of the Advisory Group stressed the need for Department management to be accountable for the review process. These members feel that visible top-level leadership from the Department is needed.

The views on the value coming from the process vary among those participating in the program. For example, there is a view from environmental group representatives that the Department is being too flexible in their attempt to finalize Agreements and that it is not clear what regulatory barriers are being addressed with the proposed Agreements. On the other hand, some company representatives hold the reverse of this view. They believe that the value of the program to a large number of companies is not yet clear, that the degree of flexibility being offered is not adequate, and that there will not be enough pay back.

III. Appendix

- A. Agreement Status Table
- B. Public Notice of Intent to Negotiate – sample
- C. Survey Results from Cook Composites and Polymers
- D. Performance Measures Table
- E. Legislative Audit Bureau Findings (April 5, 2000)



Appendix A

Table on the Status of Agreements as of November 1, 2000
Environmental Cooperation Pilot Program

Companies And State Contacts	Facility Contact	Project Milestones
International Truck And Engine¹ (engine manufacturer) Susan Lindem Lindes@dnr.state.wi.us (608) 267-0567	Matt Redmann P.O. Box 907 Waukesha, WI 53187 Matt.redmann@navistar.com (P) 262-548-1682 (F) 262-548-1672	Letter of Intent 5/29/98 Draft Agreement 10/1/99
Cook Composites And Polymers (chemical manufacturer) Lynn Persson Perssl@dnr.state.wi.us (608) 267-3763	Mike Gromacki P.O. Box 419389 Kansas City, MO 64141-6389 Gromacki@ccponline.com (P) 816-391-6011 (F) 816-391-6093	Letter of Intent 3/23/99 Draft Agreement 8/20/99 WDNR Counterproposal 7/24/00
Northern Engraving (surface coater) Mark Harings Harinm@dnr.state.wi.us (715) 831-3263	Randy Nedrelo 803 S. Black River St. P.O. Box 377 Sparta, WI 54656 NECenvman@centuryinter.net (P) 608-269-6911 (F) 608-269-9547	Letter of Intent 5/21/99 Draft Agreement 9/22/99
Madison Gas And Electric (electric and natural gas utility) John Shenot Shenoj@dnr.state.wi.us (608) 267-0802	Mike Ricciardi P.O. Box 1231 Madison, WI 53701-1231 Mricciardi@mge.com (P) 608-252-5627 (F) 608-252-7098	Letter of Intent 6/4/99 Draft Agreement 9/7/00
Packaging Corporation Of America (paper mill) Laurel Sukup Sukupl@dnr.state.wi.us (715) 365-8936	John Piotrowski N9090 County Road E Tomahawk, WI 54487 Jpiotrowski@packagingcorp.com (P) 715-453-2131, ext. 349 (F) 715-453-0476	Draft Agreement 8/27/99
Wisconsin Electric Power Company (electric utility) John Shenot Shenoj@dnr.state.wi.us (608) 267-0802	Brian Borofka 333 W. Everett P.O. Box 2046 Milwaukee, WI 53201 Brian.borofka@wepco.com (P) 414-221-4872 (F) 414-221-2169	Letter of Intent 8/31/99 Draft Agreement 6/1/00 WDNR Counterproposal 8/18/00

¹ Formerly Navistar International Transportation Corporation.

Oconto Falls Tissue² (tissue mill) Annette Weissbach Weissb@dnr.state.wi.us 920/492-5865	Jim Kellum, Plant Manager Oconto Falls Tissue, Inc. 106 E. Central Oconto Falls, WI 54154 (P) 920-983-8379	Letter of Intent, 2000
Kohler Generator (manufacturer of generators in Mosel) Jerry Rodenberg Rodenj@dnr.state.wi.us 608/266-7715	Randy Kraemer 444 Highland Dr. Kohler, WI 53044	Letter of Intent Draft Agreement 6/16/99 Letter of Withdrawal ³ 10/25/99
Nestlé USA (food processing at three facilities in Eau Claire, Stoughton and Jefferson) Kim McCutcheon Mccutk@dnr.state.wi.us (608) 275-3207	Walter Carey 60 Boardman Road New Milford, CT 06776 Walter.carey@us.nestle.com (P) 860-355-7570/(F) 355-7561	Letter of Intent 7/12/99 Letter of Withdrawal ⁴ 7/5/00

² Oconto Falls Tissue was not accepted into the pilot program. Initial discussions concluded with a mutual determination that the company's needs would be better met using flexibility provided within existing regulations.

³ See section III F. of the 2000 Progress Report for details.

⁴ See section III F. of the 2000 Progress Report for details.

Appendix B

Public Notice of Intent to Negotiate -- Template

Department of Natural Resources, Bureau of Cooperative Environmental Assistance

In accordance with Section 299.80, Wisconsin Statutes, the Secretary of the Department of Natural Resources (DNR) has decided to enter into negotiations on an Environmental Cooperative Agreement with:

(facility)

(address)

(address)

to promote superior environmental performance and encourage public participation among interested persons affected by the activities at this facility. Other goals of this pilot program include encouraging a systematic assessment of environmental impacts from this facility and working toward pollution reduction in an efficient and cost effective manner.

Pursuant to sec. 299.80(6)(a), Wis. Stats., the DNR has prepared a draft Cooperative Agreement. Specific information on this draft Cooperative Agreement can be accessed via the Internet at:

<http://www.dnr.state.wi.us/org/caer/cea/ecpp/>

or can be obtained by contacting (project manager) at (phone #) or (the company contact) at (phone #).

For the Secretary:

Jon Heinrich, Acting Director
Bureau of Cooperative Environmental Assistance

Date

Appendix C

Cook Composites and Polymers Community Survey Results Summary and Analysis August, 2000

A community survey instrument was designed, distributed and the results summarized to help provide baseline information to the company as it moves forward with a major process change and implementation of an environmental management system at the Saukville facility. The survey was distributed in two ways—handed out at an informal public meeting on July 31, 2000 and subsequently mailed to 140 individuals, businesses and organizations, mostly in the Saukville area. The mailing list was compiled from an existing CCP list of neighbors, local officials and others, a drive-by reconnaissance survey of Saukville, and environmental organizations.

Fourteen completed surveys were received from people who participated in the public meeting (virtually all who attended returned their surveys either at the meeting or through the mail) and 43 were received back from the mailing (a return rate of 31%). Following is a summary of responses and brief evaluation of the results.

Question-by-Question Summary

Do you know what street CCP is located on in Saukville?

Almost all survey respondents know where CCP is located. Only 2 of the 57 respondents indicated that they did not know which street CCP is on. (One of these two also indicated that s/he lives one block from the CCP facility.)

How long have you lived in the Saukville area?

Most of the respondents have lived or worked in the Saukville area for a long time. The mean response was 26.5 years and the median was 27 years. Responses ranged from 0 to 74 years. Is it possible that those who have lived in the area longer have different views and concerns relating to CCP? Several other survey questions will be evaluated in terms of how long respondents have lived or worked in the area. Specifically, this report will compare responses for those who have lived here ten or fewer years with those who have lived here 11 or more years, corresponding to the 10 years that CCP has owned the Saukville facility.

How far are you from the CCP facility (both home and work)?

Answers to this question were reported in feet, blocks and miles as well as with terms such as “adjacent” and “backyard.” Responses were grouped based on those who reported living or working close to the CCP facility (within a block or less than 500 feet), those located in the general neighborhood (more than a block but less than ½ mile) and those located 1/2 mile or more away. Twenty respondents (35%) are located close to CCP, 11 respondents (19%) indicated living or working in the general neighborhood and 26 (46%) indicated living or working further away. Several other survey questions will be evaluated in terms of how far away respondents live or work from the CCP facility. Specifically, this report will compare responses for those who are a block or less away, those who live in the neighborhood and those who indicated they are ½ a mile or more away.

Do you know a friend, relative or neighbor who works for CCP?

Thirty-seven respondents (65%) indicated that they know someone who works at the CCP facility and 20 (35%) indicated that they did not. Several other survey questions will be evaluated in terms of whether or not respondents know someone who works at CCP.

Which of the following best describes your general impression about the environmental performance of CCP?

Respondents were given four descriptions that describe CCP's environmental performance and were asked to choose one.

Table 1— General Impressions of CCP's Environmental Performance

	Good environmental citizen	Environmental performance OK, but can improve	Poor environmental record	Major threat to public health and environment
(1) All respondents	24 (44%)	26 (47%)	0	5 (9%)
(2) Lived or worked here 10 or less years	9 (75%)	3 (25%)	0	0
(3) Lived or worked here 11 or more years	15 (34%)	23 (53%)	0	5 (12%)
(4) Live or work one block or less away	7 (33%)	10 (48%)	0	4 (19%)
(5) Live or work in the neighborhood	2 (22%)	6 (67%)	0	1(11%)
(6) Live or work more than ½ mile away	15 (60%)	10 (40%)	0	0
(7) Know someone who works at CCP	19 (53%)	17 (47%)	0	0
(8) Don't know any one working at CCP	5 (26%)	9 (47%)	0	5 (26%)

Table 1 summarizes the survey results for this question for all respondents (1), based on living or working ten or less years in the Saukville area (2,3), based on distance respondents live or work from the CCP facility (4,5,6) and whether or not respondents know someone who works for CCP (7,8). These results indicate that 42% of all respondents think that "CCP is a good environmental citizen," 46% think "CCP's environmental performance is OK but it could improve," none chose the statement "CCP has a poor environmental record" and 9% think that "pollution from CCP is a major threat to public health and the environment."

Those who have lived in the Saukville area a shorter time (10 years or less) think that CCP's environmental performance, in general, is better than those who have lived here a longer time. All five of those who gave CCP the worst environmental rating have been in the area since before CCP owned the facility. There also are differences in ratings based on the distance people live or work from the facility, with those located within a block rating CCP's environmental performance significantly worse than those located ½ mile or more away. All five of those who gave CCP the worst environmental rating are located within a block or in the general neighborhood. Respondents who know CCP employees tended to rate

CCP's performance better than those who didn't know any employees. All five of those who gave CCP the worst environmental rating do not know any CCP employees.

Compared to 10 years ago (before CCP bought it) how do you think this facility is being run?

Forty-one respondents (72%) indicated that the CCP Saukville facility is being run cleaner, seven (12%) indicated that the facility is being run less clean, four (7%) indicated that it's being run about the same as before CCP owned it and five (9%) indicated no opinion.

Which of the following best describes your impression of odors from the plant? (Check one)

Table 2 summarizes odor perceptions for all respondents (1), based on living or working ten or less years in the Saukville area (2,3) and based on distance respondents live or work from the CCP facility (4,5,6). These results indicate that 22% of all respondents don't notice any odors coming from the plant, 48% can detect a slight odor, 13% think that odors are common, 11% think that odors are both common and annoying and 6% think that odors are constant and overpowering.

Those respondents who have lived in the Saukville area 11 years or more seem to be more concerned about odors than those who have lived here a shorter period of time. All of those who indicated that odors are common and annoying or are constant and overpowering have lived here 11 or more years.

It is probably no surprise that there also are differences in odor perceptions based on the distance people live or work from the facility, with those located within a block of the CCP facility more likely to consider the odors "common and annoying" or "constant and overpowering," and less likely to consider the odor "slight."

Table 2—Odor Perception

	Don't notice odors	Notice slight odor	Odors are common	Odors are common and annoying	Odors are constant	Odors are constant and overpowering
(1) All respondents	12 (22%)	26 (48%)	7 (13%)	6 (11%)	0	3 (6%)
(2) Lived or worked here 10 or less years	5 (42%)	6 (50%)	1 (8%)	0	0	0
(3) Lived or worked here 11 or more years	7 (17%)	20 (48%)	6 (14%)	6 (14%)	0	3 (7%)
(4) Live or work one block or less away	5 (23%)	7 (32%)	4 (18%)	3 (14%)	0	3 (14%)
(5) Live or work in the neighborhood	1 (11%)	5 (56%)	2 (22%)	1 (11%)	0	0
(6) Live or work more than ½ mile away	6 (26%)	14 (61%)	1 (4%)	2 (9%)	0	0

Additional comments provided included:

- smells are worse
- 28 years ago, odors from plant were common
- depends on wind direction
- I don't have the greatest smeller
- Several respondents mentioned that they smell odors “occasionally”

I know which chemicals CCP uses most often in their processes. (Yes or No)

I know which chemicals are in the waste products or emissions from the CCP facility. (Yes or No)

Eight respondents (14%) indicated that they know which chemicals are used at CCP and 48 (86%) indicated that they do not know. The same percentages also held for the number of respondents that indicated whether or not they know which chemicals are in waste products or emissions.

I would like to know more about CCP’s operations and the chemicals they use. (Yes or No)

Do you receive enough information from CCP about their operations to meet your needs?

Sixty-six percent of respondents would like to know more about CCP’s operations and the chemicals used. Roughly equal numbers of respondents indicated that they receive enough information from CCP (48%) and that they do not (45%). Four others provided other answers, including “sometimes,” “?” and “damn lies.”

I would like to know if the chemicals CCP uses or emits pose a threat to human health. (Yes or No)

Ninety-one percent of respondents indicated that they want to know if the chemicals CCP uses pose a threat to their health. One respondent added “It's obvious emissions pose a threat.”

On a scale of 1 to 10, with 10 being very good and 1 being very bad, how would you rate the overall environmental performance of CCP?

This question was designed to re-phrase the fifth question relating to respondents’ general impression of the environmental performance of CCP. Table 3 summarizes responses to this question.

Table 3—Numerical Ratings of CCP’s Overall Environmental Performance

	Average Rating
(1) All respondents	7.1
(2) Lived or worked here 10 or less years	7.8
(3)Lived or worked here 11 or more years	7.0
(4) Live or work one block or less away	6.9
(5) Live or work in the neighborhood	7.0
(6) Live or work more than ½ mile away	7.1
(7) Know someone who works at CCP	7.5
(8) Don’t know any one working at CCP	5.9

There was minimal variation in the average rating from all respondents and those from subpopulations based on number of years in the area and distance from the facility. Distance from the facility did not seem to matter in terms of average ratings of environmental performance. The one subpopulation that varied significantly from the overall average was those people who don’t know any CCP employees.

Do you have any concerns about any of the following relating to the CCP facility? (Check all that apply: chemical spills, air pollution, water pollution, hazardous waste, explosions, fire hazards, other)

Table 4—Community Concerns About The CCP Facility

	Number of Respondents Concerned
Chemical spills	41 (73%)
Air pollution	41 (73%)
Water pollution	34 (61%)
Hazardous waste	36 (64%)
Explosions	40 (71%)
Fire hazards	38 (68%)

At least 60% of respondents are concerned about each of the potential hazards, with spills and air pollution receiving the most attention at 73% each. One additional concern that was raised is that the company may leave, leaving behind who knows what and who will take care of it?

In my opinion, compared to other businesses and industries in the Saukville area, CCP's environmental performance is probably (better, similar, worse, no opinion).

In my opinion, compared to other chemical companies around the country, CCP's environmental performance is probably (better, similar, worse, no opinion).

Table 5—Comparison of CCP Environmental Performance to Other Businesses

	Compared to Other Saukville Businesses	Compared to Other Chemical Companies
Better	15 (26%)	17 (30%)
Similar	28 (49%)	20 (35%)
Worse	7 (12%)	3 (5%)
No opinion	7 (12%)	17 (30%)

Most respondents (75%) believe that CCP's environmental performance is similar to or better than that of other Saukville businesses. Similarly, 65% believe that CCP's performance is similar to or better than other chemical companies across the country.

What are the best ways for CCP to share information with you, as well as get your ideas, about its operations and environmental performance?

Table 6—Information Sharing Techniques

	Number of Respondents Recommending
Annual meeting at CCP	24 (42%)
Annual meeting elsewhere	7 (12%)
Quarterly meetings at CCP	5 (9%)
Quarterly meetings elsewhere	5 (9%)
Organize a community advisory committee	9 (16%)
Newsletter	39 (68%)
Include questionnaire with newsletter	12 (21%)
Provide phone number and encourage people to call with concerns	17 (30%)

About 2/3 of respondents think a CCP newsletter is a good idea and over ½ would like to see an annual meeting of some sort. Almost 1/3 think that CCP should publicize its phone number and encourage people to call with their concerns. Only 16% think that an advisory committee is a good idea. Additional ideas suggested by respondents included:

- don't start by hiding the facts
- include information in the local newspaper business section
- hold additional meetings as necessary to update all concerned

Do you think that CCP's hazardous waste incinerator poses a health risk to people in the Saukville area?

Do you think that CCP's hazardous waste incinerator creates a negative image of the Village of Saukville?

Table 7—Perceptions of the CCP Hazardous Waste Incinerator

	Health Risk To People in Saukville Area?	Creates A Negative Image of the Village?
Yes	10 (18%)	17 (30%)
No	13 (23%)	22 (39%)
Not sure	34 (60%)	18 (32%)

Many respondents (60%) are unsure about health risks from the CCP hazardous waste incinerator, however 18% are concerned about this. Respondents were relatively evenly split (1/3-1/3-1/3) on whether or not or maybe the incinerator creates a negative image of the village.

Would you be in favor of closing down the hazardous waste incinerator, if CCP could find a way to safely reduce or reuse most of the hazardous waste it now generates?

Would you be in favor of the DNR providing some regulatory flexibility to CCP in order to allow it to pursue an alternative to the hazardous waste incinerator that would reduce or reuse most of the hazardous waste it now produces?

Table 8—Perceptions Relating to Eliminating Hazardous Waste Incineration

	Favor closing hazardous waste incinerator if this waste can be safely reduced	Favor DNR regulatory flexibility to allow CCP to pursue alternatives to incineration
Yes	31 (54%)	22 (39%)
No	3 (5%)	6 (11%)
Maybe—need more information	23 (40%)	28 (49%)

Only 5% of respondents oppose closing the hazardous waste incinerator; about ½ favor closure and 40% need more information before deciding on this issue. Almost ½ of respondents need more information before deciding about DNR flexibility concessions, however only 11% oppose this. One respondent added that s/he would be in favor of closing the hazardous waste incinerator if CCP could safely reduce or reuse the waste but does not believe that the current proposal would accomplish this. As to the question about DNR flexibility, one respondent added that he agreed “with reservations” and another indicated that the proposal was “too flawed.”

What other information would you like from CCP?

A wide range of interests and concerns were suggested including the following:

- The negative effects on things, not just the positives.
- Results from this survey.
- How well a job CCP does in maintaining its property beyond the collection basin, the berm area and control of weeds etc.
- Let us know what is happening when the fire whistles go off and all we see is fire trucks but don't know what to do.
- Safety procedures within the plant. Potential problems, i.e. spills, explosions etc.
- Used to live in your backyard. Whenever we had a question or concern you were most helpful. We think you have done wonders with all the improvements.
- Does DNR still monitor your wells for onsite environmental containment?
- What is CCP policy as to when the fire department is called?
- Is the ground where I garden contaminated?
- You are doing just fine
- Why not black top or hard surface the whole plant?

- How can we trust EPA now when they build a hazardous waste incinerator in the backyard of a school?
- I would like to see a new fence around CCP--looks bad on Linden St.
- When do you plan to cut weeds around the perimeter of your property?
- Newsletters
- Are the chemicals received by rail hazardous if leaked in a rail accident?

Would you like to take a tour of the CCP Saukville facility?

Thirty-five people indicated interest in a tour. One indicated that s/he gets a tour when the fire department is called to CCP. Another would prefer a tour as part of a group and a third would like detailed plans made available during the tour.

Are you interested in serving on a citizens advisory group to provide continuing input about CCP's environmental performance, pollution prevention activities and potential closing of its hazardous waste incinerator?

Three people indicated they are willing to be on an advisory committee. An additional 6 people said they might be interested, but would need more information before deciding.

Recommendations

1. Send copies of this report (with or without these recommendations) to people who attended the July 31 CCP public meeting and to those who completed and returned surveys. Also send copies to CCP neighbors, village officials, local media and DNR officials.
2. Publish and disseminate a semi-annual newsletter focusing on (but not necessarily limited to) environmental, safety and health issues. Use the community survey results summary to identify topics to cover in the newsletter.
3. Recruit people to serve on a community advisory committee to provide input and ideas to CCP relating to:
 - CCP plans to cease incineration of hazardous waste and install new equipment allowing it to reuse some or all of these waste materials;
 - Development of CCP's environmental management system;
 - Pollution prevention activities at the facility; and
 - Other environmental, safety or health issues raised by the committee or CCP staff.
4. Evaluate and refine, if appropriate, CCP's procedures for responding to offensive odor and other complaints.
5. Develop and distribute a fact sheet about the chemicals CCP uses, produces and emits to the environment, including information on potential health and environmental effects. Explain the various environmental pathways that these chemicals can take, as well as systems in place to minimize environmental impacts. Include a telephone "hotline" number for people to call with questions or concerns.
6. Review the responses to the survey question "What other information would you like from CCP?" to identify any additional actions, if necessary, to address these issues.

7. Organize and intensively advertise annual tours of the CCP Saukville facility. Offer and publicize group tours, by appointment, throughout the year.
8. Cultivate the local media and encourage them to regularly provide information to the community about proposed CCP process changes and environmental activities.
9. Repeat this community survey in a few years.

Appendix D

Wisconsin Department of Natural Resources Environmental Cooperation Pilot Program (ECP) Program Performance Measures Table

The following table has been prepared jointly by the ECP external Advisory Group and the WDNR's internal ECP work group. The purpose of this table is to identify any potential and measurable ECP performance factors as outlined under s. 299.80 Wisconsin State Statutes, and to further determine how and by whom these factors will be measured. The "Performance Measures" column represents a "toolbox" of potential indicators which may vary from facility to facility. Facility owners are not bound by this list; others may also be identified and used by the facility owner. This list is only a suggested array of such measures.

Our goal in preparing this table is to provide both the WDNR and participating facilities a clearer framework from which to judge the effectiveness of the Pilot Program as a whole, as well as the effectiveness of each individual cooperative agreement.

Cooperative Agreement Performance Factors Table

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Protection of the Environment	s. 299.80 (2) (a) Provide at least the same level of protection of public health and the environment as provided by the environmental regulatory methods under chs. 280 to 295.	<ul style="list-style-type: none">• Changes in release rates over time• Changes in emission rates per unit of production (or sales) over time• Changes in volume of TRI emissions• Presence of a formal, robust environmental management system (EMS)	Joint - Facility and DNR	Enhanced Environmental Protection	Cooperative Agreement Content [s. 299.80 (3) (g) and (k)] and UNC Data Protocols

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Protection of the Environment	s. 299.80 (2) (d) Encourage facility owners and operators to Achieve superior environmental performance (4), both with respect to the effects of a facility that are regulated under chs. 280 to 295 and those effects that are unregulated, to reduce usage of natural resources, to minimize transfers of waste discharges among air water and land and to reduce waste generation, while achieving a balance among the economic, social and environmental impacts of these efforts that is acceptable to the community in which the facility is located.	<ul style="list-style-type: none"> • Changes in emissions per unit of production • Changes in energy use per unit of production (or sales) • Change in processes that use or release of TRI compounds • Elimination of one or more TRI compounds • Changes in the number of regulatory exceedances, reportable events, notices of violation, or fines <ol style="list-style-type: none"> 1. Air quality 2. Water quality 3. Solid waste 4. Hazardous waste 5. Other • Changes in monetary value of long-term environmental liabilities • Changes in environmental capital and/or O&M costs due to process changes • Presence of internal facility-based business scorecard that includes environmental factors • Production expansion where jobs are created in redeveloped (i.e., brownfield) sites • Presence of a formal environmental management information system • Cooperative agreement as catalyst for change, rate at which an EMS is enacted. • Number of Self disclosures/ corrective actions • Number of non-regulatory aspects • Number of activities undertaken with redirected resources. 	Joint - Facility and DNR	Enhanced Environmental Protection	Cooperative Agreement Content [s. 299.80 (3) (d)] and UNC Data Protocols

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Protection of the Environment	s. 299.80 (2) (m) Encourage facility owners and operators and communities to work together to Reduce pollution to levels below the levels required under chs. 280 to 295.	<ul style="list-style-type: none"> • Regulated parameter emissions reported below regulatory or permit levels • Percent change in regulated parameter emission levels below regulatory or permit levels • Implementation of formal supply chain environmental purchasing policies/practices with suppliers • Reduction in the toxicity of waste products • Change in the number of bio-accumulating substances discharged to water, air and land 	Joint - Facility and DNR	Enhanced Public Participation	Cooperative Agreement Content [s. 299.80 (3) (l-n)] and UNC Data Protocols, Departments of Health, POTW's, LEPC's, and RPC's
Pollution Prevention	s. 299.80 (2) (b) Encourage facility Owners and operators to systematically assess the pollution that they cause, directly and indirectly, to the air, water and land.	<ul style="list-style-type: none"> • Conduct of pollution prevention (P2) assessments/audits • Implementation/adoption of P2 assessment findings • Formal life cycle assessments (LCA) conducted and utilized • Formal assessment and re-assessment of environmental aspects 	Facility	Enhanced Environmental Protection	Cooperative Agreement Content [s. 299.80 (3) (b)], UNC Data Protocols, and facility EMS

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Pollution Prevention	s. 299.80 (2) (c) Encourage facility owners and operators to Implement efficient and cost-effective pollution reduction strategies for their facilities, while complying with verifiable and enforceable pollution limits.	<ul style="list-style-type: none"> • Economic value of pollution prevention reductions (Short term costs of P2/ pollution control and long term savings and cost avoidance) • Changes in energy or raw material usage due to P2 activities • Changes in solid/hazardous waste generation and disposal • Changes in emissions to land, air and water • Changes in greenhouse gas emissions • Changes in stratospheric ozone depleting substances inventory or usage • Energy value of avoided waste generation • Energy value of recovered/reprocessed waste materials 	Joint - Facility and DNR	Enhanced Environmental Protection	Cooperative Agreement Content [s. 299.80 (3) (e) and (f)], UNC Data Protocols, facility EMS, and performance audits
Flexibility and Cost Savings	s. 299.80 (2) (e) Recognize and reward facility owners and operators who have demonstrated excellence and leadership in environmental stewardship or pollution prevention and who can achieve reductions in emissions and waste generation through implementation of innovative measures.	<ul style="list-style-type: none"> • Public recognition/awards granted to or obtained by facility owners 	DNR as well as other independent entities	Enhanced Environmental Protection/Enhanced Public Participation	DNR to provide award-type incentives to facilities
Flexibility and Cost Savings	s. 299.80 (2) (g) Consolidate into a cooperative agreement environmental requirements relating to a facility owned or operated by a participant that are other wise included in separate approvals to the extent that consolidation is practical and efficient.	<ul style="list-style-type: none"> • Changes in the number of permits required by a facility 	Joint - Facility and DNR	Improved Government and Business Efficiency	Cooperative Agreement Content [s. 299.80 (3) (i)]

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Flexibility and Cost Savings	s.299.80 (2) (h) Grant the owners and operators of facilities greater flexibility than would otherwise be allowed under chs. 280 to 295 and rules promulgated under those chapters.	<ul style="list-style-type: none"> Changes in number of days required for permit approval Changes in number of parameters or measurements required to be collected, recorded or reported Number of variances granted and associated trade-offs. 	DNR	Improved Government and Business Efficiency	Cooperative Agreement Content [s. 299.80 (3) (h)]
Flexibility and Cost Savings	s. 299.80 (2) (i) Seek to Reduce the time and money spent by government and owners and operators of facilities on paperwork and other administrative tasks that do not result in benefits to the environment	<ul style="list-style-type: none"> Number of separate reports/submissions required Changes in the number of facility technical and/or administrative staff hours Changes in the number of regulatory agency technical, enforcement and/or administrative staff hours Economic value of reduced administrative, technical, and regulatory staff hours Costs of implementation and maintenance of an EMS Changes in facility and DNR time required in permitting process 	Joint - Facility and DNR	Improved Government and Business Efficiency/Enhanced Environmental Protection	Cooperative Agreement Content [s. 299.80 (3) (p)], and DNR to measure government portion
Information Sharing	s. 299.80 (2) (f) Encourage the transfer of information about methods for improving environmental performance and the adoption of these methods by others.	<ul style="list-style-type: none"> Number of regulated parameters reported to the public Number of nonregulated parameters reported to the public Availability of environmental performance information on several media formats (e.g., printed reports/summaries, websites, etc.) 	DNR	Enhanced Environmental Protection/Improved Government and Business Efficiency	DNR to assist via its web site, case studies, press releases, and public records.

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Information Sharing	s. 299.80 (2) (l) Provide public access to information about performance evaluations conducted by participants in the program under this section.	<ul style="list-style-type: none"> • Number of EMS audits performed and results reported to public • Number of corrective actions or system improvements resulting from audits • Changes in volume of emissions resulting from audits • Management system changes or improvements resulting from EMS audits 	Joint - Facility and DNR	Enhanced Public Participation	Cooperative Agreement Content [s. 299.80 (3) (l-n)], and DNR public records
Information Sharing	s. 299.80 (2) (k) Seek to improve the provision of useful information to the public about the environmental and human health impacts of facilities on communities.	<ul style="list-style-type: none"> • Number of parameters reported by facility as requested by Community Advisory Panel (CAP) • Number of environmental parameters reported as both absolute and normalized data • Additional qualitative indicators that may be easily understandable to the public in lay terms 	Joint - Facility and DNR	Enhanced Public Participation	Cooperative Agreement Content [s. 299.80 (3) (l-n)], DNR case studies, DNR web site
Public Participation & Trust	s. 299.80 (2) (j) Encourage public participation and consensus among interested persons, in the development of innovative environmental regulatory methods and in monitoring the environmental performance of projects under this section.	<ul style="list-style-type: none"> • Formation (diversity of group) and presence (reason for being there) of a Community Advisory Panel (CAP) • Number or periodicity of CAP meetings • Number of process or management system changes resulting from input from CAP or other external stakeholders 	Joint - Facility and DNR	Enhanced Public Participation	Cooperative Agreement Content [s. 299.80 (3) (l-n)]

Category	DNR Goals / Performance Factors	Performance Measures	Data Collector	Critical Success Factors	Data Collection Tools
Public Participation & Trust	s. 299.80 (2) (n) Seek to Increase trust among government, facility owners and operators and the public through open communication and support of early and credible resolution of conflicts over issues concerning the environment and environmental regulation.	<ul style="list-style-type: none"> • Number of actions taken in response to CAP input • Number of audits performed with agency staff observing • Number of audits performed with members of CAP observing • Number of people touring the facility during open houses • Economic value of process modifications or P2 efforts taken in response to CAP input • Results of “exit polls” or other indices to measure community relations status • Number, Quality and Nature of public inquiries 	Joint - Facility and DNR	Improved Government and Business Efficiency/Enhanced Public Participation	Cooperative Agreement Content [s. 299.80 (3) (l-n)], and DNR public trust survey development, or use of existing surveys (ex: WMC), citizen complaint files, citizen interviews.

Appendix E

(Presented originally on State of Wisconsin\Legislative Audit Bureau letterhead.)

April 5, 2000

Senator Gary R. George and
Representative Carol Kelso, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator George and Representative Kelso:

We have completed a review of the Environmental Cooperation Pilot Program, which was established by 1997 Wisconsin Act 27. The program, operated by the Department of Natural Resources (DNR), is intended to provide increased flexibility for facilities in complying with environmental regulations, while maintaining existing levels of environmental protection. The Legislative Audit Bureau is directed to monitor and report annually on the program.

The program allows DNR to sign cooperative agreements with facility owners and operators. No cooperative agreements were established in the program's first two years. However, in March 1999, the Department and the U.S. Environmental Protection Agency (EPA) signed a formal agreement stating that facilities that enter into cooperative agreements will not be subject to different EPA requirements at a later date. DNR staff believe the agreement with the EPA will encourage more facilities to consider developing cooperative agreements. Seven facilities have submitted letters of intent to join the program, and DNR expects to sign two cooperative agreements by the summer of 2000.

Because of the limited activity in the program during its first two years, it is too early to assess its effectiveness. We will, however, continue to monitor it and issue a report in early 2001.

Sincerely,

Janice Mueller
State Auditor

JM/bm

Enclosure

THE ENVIRONMENTAL COOPERATION PILOT PROGRAM

1997 Wisconsin Act 27 created the Environmental Cooperation Pilot Program with the goal of encouraging innovation and experimentation in environmental regulation, while maintaining at least the current level of environmental protection. To do that, the program authorizes the Department of Natural Resources (DNR) to establish up to ten cooperative agreements with owners or operators of facilities covered by environmental regulatory licenses or permits, such as water pollution discharge elimination permits or air pollution control permits. More than one facility may be covered under an agreement, if they have the same owner or operator. In these agreements, which last five years and can be renewed for an additional five years, DNR agrees to give facilities greater flexibility in meeting federal and state environmental regulations and reduce administrative requirements. In return, facilities must evaluate their entire effect on the environment, establish goals to reduce their overall level of pollution, and measure their progress toward those goals. Cooperative agreements will replace and supersede provisions of any DNR licenses or permits for the term of the agreement. However, the owner or operator will still be required to pay the same fees under the cooperative agreement as under superseded licenses or permits.

Statutes and DNR procedures determine the process by which DNR and participating facilities develop cooperative agreements. First, a facility owner or operator sends DNR a letter of intent and application, indicating plans to negotiate a cooperative agreement. The facility then submits to DNR a draft agreement, or initial proposal for items to be included in the cooperative agreement. DNR staff develop a counter-proposal that indicates points of agreement and areas that require greater explanation or negotiation. At this point, formal negotiations begin between DNR and the participating facility, the product of which is a signed cooperative agreement.

Terms of the cooperative agreements are specific to each participating facility. For example, DNR can grant one or all of the following:

- reduced monitoring, record-keeping, and reporting requirements;
- removal of requirements to screen for pollutants that have not appeared in earlier analyses;
- creation of facility-wide permits for some waste or pollution sources; and
- expedited decision-making from DNR and the U.S. Environmental Protection Agency (EPA) regarding new permits or variances to existing permits.

In addition, DNR is prohibited from bringing civil action against participating facilities for civil violations disclosed by the facility that do not present an imminent threat to public health or the environment and are corrected within 90 days. However, the Department retains its authority to bring civil and criminal charges against facilities if it discovers serious violations during routine enforcement reviews. The program also requires participating facilities to engage in public involvement activities. Specifically, they are required to establish "interested persons groups" composed of local citizens who review both the design of their environmental management systems and progress toward meeting waste reduction goals. DNR also must provide for public comment on any issuance, modification, or revocation of a cooperative agreement.

Finally, the legislation requires annual progress reports to the Legislature by the DNR, and for the Legislative Audit Bureau to monitor the program.

Memorandum of Agreement between DNR and EPA

DNR staff indicate that because the EPA did not provide its formal support to the program during the first one and one-half years, progress on establishing agreements was impeded. Facility owners and operators were concerned that EPA might not recognize the permit variances granted by DNR, resulting in additional rather than reduced work required to follow both the federal and state rules. Moreover, concern was expressed that citizens could bring legal action against firms for not following federal regulations.

However, on March 25, 1999, EPA and DNR signed the nation's first federal-state agreement allowing development of an experimental regulatory system. The principal points of the agreement include:

- assurance to facilities that DNR's cooperative environmental agreements are allowed and supported by EPA;
- creation of an Interagency Innovations Team, composed of DNR and EPA staff, to coordinate regulatory change and enforcement decisions for each participating facility; and
- assurance to EPA that Wisconsin will continue to provide adequate enforcement against facilities with serious violations.

The memorandum of agreement outlines the process that the interagency team will follow when implementing cooperative agreements. First, both DNR and EPA will review draft agreements and agree upon their strengths and challenges. The EPA will have four weeks to react to draft agreements and identify any potential issues that need to be resolved. Second, DNR will negotiate a cooperative environmental agreement with interested facilities. While EPA has no role in the actual negotiations, the interagency team may be used to identify mechanisms that can carry out specific innovations requested by facilities. Third, DNR and EPA will work together as issues arise through the implementation process of individual cooperative agreements and the pilot project in general. Finally, the interagency team, along with other interested parties, will develop criteria with which to evaluate the program.

In addition, the memorandum of agreement clarifies the steps that DNR and EPA will take to ensure that any changes to state or federal environmental requirements are legally binding and enforceable. If a facility requests modifications to the state environmental program, such as those that govern noise, odors, or airborne chemicals not regulated by EPA, the state will decide whether to approve the changes. However, if a facility requests changes to a federal program, EPA will decide whether to approve the changes. If they are approved, EPA will decide on accommodating actions depending on the type of changes requested. In any case, EPA and DNR have agreed that any approved modifications written in cooperative agreements will replace those previously in effect and become the enforceable rules for those facilities.

Current Status of the Program

In addition to signing the agreement with EPA, since 1997 Wisconsin Act 27 was enacted in October 1997, DNR has:

- provided information about the program to facilities and the public through flyers and public speaking opportunities;
- received letters of intent to join the program from seven facilities; and
- organized a Cooperative Agreement Advisory Group to evaluate the program's success over the long term.

DNR's initial mail solicitation generated 49 requests for additional information on the pilot program, and DNR staff met with representatives from 11 facilities. Although DNR has not yet signed any cooperative environmental agreements, four of the seven facilities that have sent letters of intent also have submitted draft agreements. These facilities are:

- Packaging Corporation of America, of Tomahawk;
- Navistar International of Waukesha;
- Cook Composites and Polymers of Saukville; and
- Northern Engraving Corporation of Sparta.

The Kohler generator facility in Mosel had sent a letter of intent and a draft agreement to DNR. However, after receiving a formal response from DNR, it decided to withdraw from the program.

Draft agreements allow participating facilities to propose variances and operational flexibility from DNR. Requested variances include:

- reduced sampling frequency for wastewater discharges;
- a single permit that would cover all environmental emissions for the entire facility;
- fewer inspections upon implementation of a recognized environmental management system; and
- a facility-wide air pollution cap, which would allow a facility to construct or modify air emission sources within existing facilities without going through DNR's permit process.

Finally, the draft agreements describe how participating facilities will incorporate public input through interested persons groups, any steps they commit to make toward exceeding current environmental requirements, and how agreements will be enforced.

DNR has organized teams of regional and headquarters staff to develop counter-proposals for each of the draft agreements that it has received. DNR staff also met with Navistar officials in preparation for writing a counter-proposal to assess the types of pollutants that the facility's owners wish to address through the agreement and develop possible alternatives to accommodate the facility's requests. Because the facility is in an area of the state that does not meet EPA's overall air quality standards and the facility has decided to focus on air quality issues, DNR and Navistar met with EPA representatives to discuss whether EPA can provide flexibility to federal air quality regulations. While DNR expects that counter-proposals to Packaging Corporation of America, Cook Composites, and Northern Engraving will be relatively straightforward, it anticipates Navistar's counter-proposal will take longer to develop because of the facility's issues.

To evaluate the program's ongoing performance, DNR has organized a Cooperative Agreement Advisory Group, which consists of representatives from facilities that have submitted a letter of intent, EP A, the Department of Commerce, and business and environmental organizations. The advisory group has met three times since its formation, and is currently focusing on developing performance measures for the program. In addition, to increase the program's accessibility to the public and other facilities, DNR has all documents related to the program, including draft agreements and counter-proposals, available on its internet web site.

Statutes require DNR to try to attract facilities "of a variety of types, sizes, and locations" to the program; thus far, only larger facilities have expressed interest. DNR has been attempting to attract smaller facilities through discussions with consulting firms that act to ensure those facilities' environmental compliance and through other outreach activities. However, none have yet shown interest, apparently because in general they have fewer regulations to follow and fewer resources to commit to developing program requirements such as an environmental management system.

Future Considerations

According to its October 1999 report, DNR expects to have two cooperative agreements negotiated and signed, and to receive three additional draft agreements by the summer of 2000. By the end of 2000, DNR expects to have signed five cooperative agreements and to have received ten letters of intent to participate.

However, as of March 2000, DNR has not returned any counter-proposals or begun formal negotiations with any facilities that have submitted draft agreements, and it has missed deadlines it has set for itself in its last two reports. Therefore, it is possible that it will not reach all of its goals. The statutes state that DNR may not sign any agreements after October 1, 2002.

More Information Available

This Progress Report and other information on the Environmental Cooperation Pilot Program are available on the Wisconsin Department of Natural Resource's website at:

<http://dnr.wi.gov/org/caer/cea/ecpp/>

